

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 24, 2012

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on August 24, 2012. Members present were Vice-Chair Kathryn Moore, James Griggs, Noel White and Thomas Glover. Chairman Louis Stout and members Janice Meyer and Barry Stumbo were absent. Others present were Jim Gallimore, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Sallee and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Vice-Chair announced that the minutes of the February 24, 2012 and the May 18, 2012 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer, Stout, and Stumbo absent) to approve the minutes of the February 24, 2012 meeting.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer, Stout and Stumbo absent) to approve the minutes of the May 18, 2012 meeting.
- III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 - a. **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** - requests an administrative review of a Zoning Compliance Permit issued for a mobile MRI facility in a Professional Office (P-1) zone, on property located at 1713 Nicholasville Road. (Council District 3)

The neighborhood association has requested that this be postponed until the Board's September 28, 2012 public hearing.

Representation – Richard Murphy, attorney, was present on behalf of the property owner at 1713 Nicholasville Road. He stated that, as the agenda indicates, the appellant has asked for a postponement, and they concurred with the request. There was no one present in opposition to the requested postponement.

In response to the Vice-Chair, Mr. Emmons explained that this item was on the agenda because the request for postponement was not received until after the legal ad was published. He confirmed that he had spoken with the president of the Cherokee Park Neighborhood Association and received an e-mail request to postpone this matter until the September 28, 2012 meeting.

Action – A motion was made by Mr. Griggs, seconded by Ms. White, and carried unanimously (Meyer, Stout and Stumbo absent) to postpone **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** until the September 28 meeting.
 - b. **A-2012-53: EFRAN & VLADIMERA ALAMI** - request an administrative review to determine that a drive-through facility in a Planned Neighborhood Residential (R-3) zone would not constitute expansion of a non-conforming use, on property located at 500-502 East Seventh Street. (Council District 1)

The Staff Recommends: Disapproval, for the following reasons:

 1. Establishing a retail drive-through service window at this location, in a Planned Neighborhood

Residential (R-3) zone, represents an expansion of a non-conforming use in both scope and area of operation, which is not permitted pursuant to Article 4-3(a) of the Zoning Ordinance.

2. Establishing the drive-through window service required an alteration to the exterior of the building, and additional land to be used outside of the building (for the gravel drive), neither of which is permitted pursuant to Articles 4-3(e) and 4-3(g) of the Zoning Ordinance.
3. A drive-through service along the east side of the building has great potential to adversely impact the adjoining residential use, which could negatively impact the existing or future development/redevelopment of that property. Such an outcome would be contrary to the provisions of Article 7-6(e) of the Zoning Ordinance.

Mr. Emmons said he had spoken with the appellants' attorney and received an e-mail requesting a one-month postponement of the subject appeal until the Board's September 28, 2012 meeting.

There was no one present in opposition to the requested postponement.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Meyer, Stout and Stumbo absent) to postpone **A-2012-53: EFRAN and VLADIMERA ALAMI** until the September 28 meeting.

At this point, Vice-Chair Moore asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. She administered the oath to several audience and staff members at this time.

2. No Discussion Items - The Vice-Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
 - a. **V-2012-54: LEXINGTON GRANITE COMPANY** - appeals for a variance to reduce the required 10-foot setback from the right-of-way for a free standing identification sign to 0 feet in a Light Industrial (I-1) zone, on property located at 771 West Main Street. (Council District 2)

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare; should not alter the character of the general vicinity, nor will it cause a hazard or nuisance to the public. In addition, granting the variance will not have any effect on the sight triangle in this location because of the unusually wide rights-of-way. A sign has existed near this location, in the right-of-way, for 13-14 years; therefore, moving the sign onto the property and onto a pole will not change the basic character of this corridor. In fact, it should improve visibility and allow appropriate identification for the property.
2. The unusually wide right-of-way and the location of the existing sign in the right-of-way are special circumstances that apply to this property that do not generally apply to other properties in the vicinity.
3. Strict application of the setback requirement will require the sign to be placed in the parking lot, eliminating some of the existing parking.
4. The previous sign, which was in the right-of-way, was removed due to utility upgrades in this area that were completed about a year ago. The proposed location of the new sign will be on the applicant's property outside of the right-of-way near the original location, and on the only logical portion of the applicant's property; therefore, this variance request is not a direct result of the appellant's own actions since the adoption of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The sign shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Bob Carter, managing partner, was present representing the appellant. He indicated that he had read, understood and would abide by the conditions for approval.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Meyer, Stout and Stumbo absent) to approve **V-2012-54: LEXINGTON GRANITE COMPANY** – a variance to reduce the required 10-foot setback from the right-of-way for a freestanding identification sign to 0 feet in a Light Industrial (I-1) zone on property located at 771 West Main Street, for the reasons recommended by the staff and subject to the two conditions.

- b. **CV-2012-52: TRANSYLVANIA UNIVERSITY** - appeals for a conditional use permit to provide an outdoor athletic facility accessory to a church-related school for academic instruction in a Light Industrial (I-1) zone; and a variance to eliminate the required landscape buffer/zone-to zone screening along Coolavin Park, on properties located at 523, 551 & 555 West Fourth Street. (Council District 1)

The Staff Recommends: Approval of the conditional use, for the following reasons:

1. Facilities for a church-related school for academic instruction, such as Transylvania University, is a permitted conditional use in the Light Industrial (I-1) zone.
2. Construction of athletic facilities on this tract will allow the University to provide an athletic complex that meets the strict NCAA Division III requirements. Furthermore, this use will strengthen the connection between Transylvania University and Bluegrass Community and Technical College.
3. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the landscape variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity. The goal of providing a landscape buffer between the I-1 and R-4 zones is to screen residential uses from industrial uses. In this case, the I-1 property will be used for athletic fields, requiring no need for the buffering the adjacent R-4 property used as a park.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the adjacent R-4 property is not being used for residential purposes.
- c. The special circumstance that applies in this case is that the two adjacent properties, although zoned differently, will have very similar uses and hours of operation.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of the reasonable use of its land and would possibly create an unnecessary hardship, because elimination of the landscape buffer will improve the security of each property.
- e. This property was zoned I-1 prior to the acquisition by the applicant and planted with a line of trees long before that, and therefore is not a direct result of the actions taken by this applicant.

These recommendations of approval are made subject to the following conditions:

1. The athletic field shall be established and operated in accordance with the submitted application, except that the placement of buildings, turf areas, and paved areas may be altered due to issues related to the existing sanitary sewer line, provided that the floor area of buildings is not increased over that depicted on the submitted site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction/grading activity taking place on this site.
3. Any lighting needed for the athletic fields shall be directed away from adjacent residential zones and the Florence Crittenden Home.
4. The existing trees over 4" dbh separating Coolavin Park and the subject property shall be maintained, although thinning of this treeline may be approved by the Urban Forester. New tree plantings shall replace any trees removed with an appropriate species from the LFUCG Planting Manual.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Richard Murphy, attorney, was present representing the appellant. Mr. Murphy introduced Mark Matthews, Vice President of Business & Finance for Transylvania University, and Peter Fischer, designer from Ross-Tarrant Architects.

Citizen Comment – Mr. Emmons circulated a letter from the nearby Neighborhood Association in support of this request.

Appellant's Presentation – Mr. Murphy clarified that there was the possibility that the appellant was exploring whether they could possibly move a 30" sanitary sewer force main from this location. If they were able to do so, it would necessitate moving the buildings around on their site a little. Condition #1, this allows for this possibility. He said that they understood that this would also allow the track facility to be

moved as well.

Mr. Murphy said that the other item worthy of mention was that the fence along Fourth Street was to be an ornamental one, but they were not yet sure of the design. They were not sure about the fencing material that would be used around the other three sides of the property. He said that this was mentioned at the Landscape Review Committee meeting, and that a coated chain link material was discussed. A dark version of this material would be attractive, but would also enable visual inspection of the property, for security purposes. He said that the Committee discussed some flexibility in its location along the park, due to the existing trees along that line.

Mr. Murphy said that the appellant did agree with the staff's recommended conditions, with these two clarifications, and he asked the Board for approval of their request.

Discussion – Ms. Moore asked the staff if any change to the conditions was in order. Mr. Sallee responded that the first condition was drafted with it in mind that the track could be relocated, as it was a paved area. Mr. Emmons replied that no change was needed to the conditions related to the fence. He said that the open view of the property was an important consideration by the Landscape Review Committee and to the staff.

Mr. Griggs said that if he made a motion to approve this request, he would like to change condition #1 to add the term "including the track" in regard to the "paved areas" mentioned therein.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer, Stout and Stumbo absent) to approve **CV-2012-52: TRANSYLVANIA UNIVERSITY** – an appeal for a conditional use permit to provide an outdoor athletic facility accessory to a church-related school for academic instruction in a Light Industrial (I-1) zone; and a variance to eliminate the required landscape buffer/zone-to zone screening along Coolavin Park, on properties located at 523, 551 & 555 West Fourth Street, based on the staff recommendations, and subject to the four recommended conditions, modifying the first condition as follows:

1. The athletic field shall be established and operated in accordance with the submitted application, except that the placement of buildings, turf areas, and paved areas, including the track, may be altered due to issues related to the existing sanitary sewer line, provided that the floor area of buildings is not increased over that depicted on the submitted site plan.

- c. **C-2012-46: BOONE'S CREEK BAPTIST CHURCH** - appeals for a conditional use permit to expand the church (gymnasium & education building) in the Agricultural Rural (A-R) zone, on properties located at 173 & 185 North Cleveland Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Although a sizeable addition, its location is to the rear of the existing church, and is not readily visible. There is adequate off-street parking for the use of the new gymnasium and education building. Best Management Practices will be used for both grading and construction in order to protect the cemetery on the adjoining property.
- b. All necessary facilities and services are available and adequate for the proposed use, provided the septic system is determined to be adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the building.
3. The septic system shall be inspected by the Fayette County Board of Health to determine its adequacy relative to the proposed construction & expanded use of the building(s).
4. A Land Disturbance Permit shall be obtained from the Division of Engineering prior to construction.
5. The church shall take the following measures to ensure that the proposed addition does not have a negative effect on the adjacent cemetery:
 - a. A temporary fence shall be placed 10' from cemetery property line.
 - b. No construction equipment shall be placed on the cemetery property.
 - c. No excavation, grading, or digging shall occur within 10' of the cemetery property line, unless approved by the Division of Engineering for the purpose of providing necessary storm water management facilities for this property or the cemetery.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – John Davidson was present on behalf of the appellant. Vice-Chair Moore asked if he had read and understood the staff report. Mr. Davidson replied affirmatively. Vice-Chair Moore asked if Mr. Davidson would agree to abide by the recommended conditions. Again, he replied affirmatively.

Discussion – Mr. Griggs asked if the proposed addition was crossing a property line. Mr. Davidson replied that it was, and said that the church owns two tracts of land, totaling 23 acres. Mr. Emmons added that the lot line shown on the site plan had already been consolidated. He said that the church used to own three parcels, and they had already been combined. Mr. Griggs asked if the addition was not going to cross a property line. Mr. Emmons confirmed, despite what was shown on the site plan, that the addition would not do so.

Action – A motion was made by Ms. White, seconded by Mr. Griggs and carried unanimously (Meyer, Stout and Stumbo absent) to approve **C-2012-46: BOONE'S CREEK BAPTIST CHURCH** – an appeal for a conditional use permit to expand the church (gymnasium & education building) in the Agricultural Rural (A-R) zone, on properties located at 173 & 185 North Cleveland Road, for the reasons provided by the staff, and subject to the five conditions recommended by the staff.

- d. **C-2012-49: INDEPENDENT HEALTHCARE PROPERTIES, LLC** - appeals for a conditional use permit to construct and occupy an assisted living facility in a Professional Office (P-1) zone, on property located at 150 Shoreside Drive (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit for an assisted living facility should not adversely affect the subject or surrounding properties. Very minimal traffic will be generated by the facility, and excessive noise or other types of disturbances are not anticipated.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and prior to occupying the facility.
3. Action of the Board shall be noted on the development plan approved by the Planning Commission for the subject property.
4. The parking area shall be paved, striped, and landscaped/screened, according to the requirements of Articles 16 & 18 of the Zoning Ordinance.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Mr. Tony Barrett was present on behalf of the appellant.

Citizen Comment – Mr. Emmons circulated a letter to the Board from a nearby resident in opposition to this request.

Questions – Mr. Griggs asked if the neighbors were notified in the vicinity of the generator shown. Mr. Emmons replied that all of the property owners within 500' of the site were sent a notice letter. Mr. Griggs asked if a copy of the site plan was included in that notification. Mr. Emmons replied affirmatively. Mr. Griggs said that the generator mentioned in the staff report might not have been evident to the residents that received this site plan with their notice letter.

Mr. Griggs asked, since it is an electrical device, if it could be moved to another location. Mr. Emmons responded that he was not aware that this location had been approved by the Planning Commission on their development plan. Mr. Emmons said that the appellant was planning to add notes on the development plan to limit the hours and duration of the testing of this generator. He displayed the proposed note on the overhead projector for review by the Board. Mr. Emmons said that there would also be a soundproofed casing installed over the generator, bringing the noise level down to about 72 decibels, which is about the level of a lawnmower. With all of these restrictions, the negative effects of this

generator on the neighbors would be mitigated.

Mr. Griggs asked the staff, if they lived in the home adjacent to the generator, how they would feel about it being in that location. Mr. Emmons replied that he would not be upset about it. Mr. Griggs said that if he lived in that home, he would be upset about it, given the numerous other locations available on the site for this generator.

Mr. Barrett replied that the generator would be in line with the other electrical facilities in the ground, and that it would serve, basically, as the transformer for their electric service. The only time it would be operating is when the power was out in the area.

Mr. Griggs asked if the generator would be in operation during its weekly testing. Mr. Barrett replied affirmatively, noting that its use is only planned during outages. He said that they are going to restrict its testing to be on weekdays between the hours of 9:00 AM and 5:00 PM. They attempted to not have it running during the hours when people would not tend to be at home. He said that the generator is no louder than a leaf blower or a piece of power equipment.

Mr. Griggs said that he relies upon hearing protection measures when he used his leaf blower, as he thought those were rather loud. He felt that the adjoining property owner would be adversely affected by the noise of this generator. He thought that it was located here out of convenience to the appellant; but that with conduit, this generator could be placed at other locations on this property. Mr. Barrett replied that the noise is louder at the source, but this is at the best location on the site.

Mr. Glover said he shared Mr. Griggs' concerns, and asked if other locations had been considered for the generator. He said that if he were that homeowner, he would be concerned about its planned location. Mr. Barrett replied that the generator must be installed and replaced using a crane, due to its size.

Mr. Glover asked if a 6' high privacy fence should be installed around the property. Mr. Griggs replied that perhaps a concrete wall would be necessary to properly buffer the adjoining residence from the generator.

Vice-Chair Moore asked if the neighboring residents were present at the Planning Commission meeting when the development plan was considered. Mr. Saltee replied that they were not, as that plan did not require any mailed notice to the area residents, unlike this application.

Mr. Barrett said that the location was selected based upon the need to locate the generator where a crane could install it from the street. He said that proximity was necessary to both electric service and to natural gas lines, as that is how the generator is powered when electricity is not available. He said that the assisted living facility will sit lower than the other residences and the generator, and they could consider relocating it to the portion of the property where the dumpster is located. Mr. Barrett said that this could be done, but not without considerable expense to the appellant, and against their wishes; but they would do so in order to "move on" with this application. He said that they would agree to an added condition to relocate the generator.

Mr. Emmons said that the staff would offer an additional condition, and displayed it on the overhead projector for review by the Board. It read as follows:

5. The generator shall be relocated to the dumpster area shown on the site plan.

Mr. Griggs said that he would like to compliment the applicant on their flexibility in this matter.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried unanimously (Meyer, Stout and Stumbo absent) to approve **C-2012-49: INDEPENDENT HEALTHCARE PROPERTIES, LLC** – an appeal for a conditional use permit to construct and occupy an assisted living facility in a Professional Office (P-1) zone, on property located at 150 Shoreside Drive, for the reasons provided by the staff, and subject to the five conditions proposed.

- e. **C-2012-50: VINEYARD COMMUNITY CHURCH** - appeals for a conditional use permit to expand the church (worship center and gathering space) and parking area in a Single Family Residential (R-1D) zone, on property located at 1881 Eastland Parkway (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding

properties, as the location of the proposed addition is centrally located on this property, and there is adequate on-street and off-street parking for the use of the new sanctuary.

- b. All necessary public facilities and services are available and adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The site shall be developed in accordance with the submitted site plan, except as modified to allow the preservation of any healthy mature trees at the time of a paving permit for the parking area shown as "future parking" on the site plan. It is expected that this modification in the layout to save the trees will require the loss of 3-5 parking spaces on the southwestern corner of the subject property.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the building.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Jay Million, Million Architecture PLLC, was present on behalf of the appellant.

Vice-Chair Moore asked if the appellant had read and understood the staff report. Mr. Million replied affirmatively. Vice-Chair Moore asked if the appellant would agree to abide by the two recommended conditions. Again, Mr. Million replied affirmatively.

Action – A motion was made by Ms. White, seconded by Mr. Glover, and carried unanimously (Meyer, Stout and Stumbo absent) to approve **C-2012-50: VINEYARD COMMUNITY CHURCH** – an appeal for a conditional use permit to expand the church (worship center and gathering space) and parking area in a Single Family Residential (R-1D) zone, on property located at 1881 Eastland Parkway, for the reasons provided by the staff, and subject to the conditions recommended by the staff.

- f. **C-2012-51: RLG INVESTMENTS, LLC** - appeals for a conditional use permit to expand an existing pawn shop in a Highway Service Business (B-3) zone, on property located at 212 East New Circle Road (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that two access points (one off of East New Circle Road and one off of Bryan Station Road) at the street intersection are closed. Adequate off-street parking is available for this use (provided pawned vehicles are not parked on site), and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawn shop shall be established in accordance with the submitted application and a revised site plan indicating: (a) the closure of the two access points closest to the street intersection, and (b) the provision of a continuous landscape buffer of at least 150' in length that wraps around the curved corner of the intersection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. The two access points closest to the intersection of Bryan Station Road and East New Circle Road shall be closed in accordance with the requirements of the Kentucky Transportation Cabinet.
4. A landscape buffer, as required for a vehicular use area pursuant to Article 18-3(a)(2)2 of the Zoning Ordinance, shall be provided for a minimum of 150' in length at the curved corner of the street intersection, subject to approval by the Landscape Examiner with the Division of Building Inspection. That buffer, to consist of tree and shrub plantings only and no fence or wall, shall include the area encompassed by the two access points that are to be closed.
5. Any pawned vehicles shall be stored off site at a location approved for such a use, subject to verification by the Division of Building Inspection.
6. This approval shall become null and void should the appellant no longer own or occupy this business on the subject property.

Vice-Chair Moore asked whether there were objectors to the subject appeal present. There was no response.

Representation – Jason Banks, Banks Engineering, was present on behalf of the appellant. Mr. Banks said that the appellant had read the staff report and recommendation, and would agree to abide by the conditions recommended for approval.

Mr. Emmons said that the staff had received a revised site plan, and he placed a copy of it on the overhead projector. Ms. Moore asked if the site plan being displayed met the recommended condition. Mr. Emmons replied affirmatively. Mr. Emmons said that this plan addressed the required parking, and the additional landscaping recommended.

Action – A motion was made by Mr. Griggs, seconded by Ms. White and carried unanimously (Meyer, Stout and Stumbo absent) to approve **C-2012-51: RLG INVESTMENTS, LLC** – an appeal for a conditional use permit to expand an existing pawn shop in a Highway Service Business (B-3) zone, on property located at 212 East New Circle Road, for the reasons recommended by the staff, and subject to the six conditions recommended by the staff.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining.

D. **Conditional Use Appeals**

1. **C-2012-47: NADIA ALI BENALI** - appeals for a conditional use permit for a home occupation (tutoring) in a High Density Apartment (R-4) zone, on property located at 368 Shoreside Drive (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation of tutoring will meet the requirements stated in Article 1-11 of the Zoning Ordinance. Adequate parking is available for this use. Noise and other disturbances are not anticipated.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

- 1. Tutoring shall be provided in accordance with the submitted application.
- 2. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection within 30 days of the Board's approval.
- 3. Students shall be limited to one at a time unless they arrive in the same vehicle.
- 4. This conditional use shall become null and void should the appellant no longer reside at this location.

Representation – Nadia Ali Benali was present for her appeal.

Citizen Comments – Ashley DeShawn, President of the Lake Crossing Homeowners Association, was present, and had a question. She said that some of the neighbors were originally opposed to this request, but she thought that they had been able to reach a resolution to their differences. She asked if there was any recourse to the association if these four conditions of approval were not met by the appellant.

Mr. Emmons said that the staff was unsure as to what had been agreed to between the appellant and the neighborhood association. He said that it would be beneficial to understand their agreement, but the staff was prepared to present its report.

Vice-Chair Moore asked Ms. DeShawn to explain their agreement. Ms. DeShawn replied that condition #3 was the key to their agreement, and that they were agreeable that the students arrive at the site in one vehicle. She said that the Benalis had also agreed that they would instruct parents not to use the neighbors' driveways as a turn-around for their vehicles. She wondered if there were valid complaints, if it would be possible for this conditional use to be revoked.

Mr. Emmons said that if there were violations of these conditions, the Zoning Enforcement section could seek to bring this case back to the Board for a revocation hearing. He said that only a violation of the listed conditions would allow for a revocation of this conditional use permit. He said that a six month review could also be cited, to allow for the opportunity for a more specialized review of the use, if it were to be approved, and to see if there were any complaints.

Vice-Chair Moore said that one of the tests for approving a conditional use permit is whether it had an adverse impact upon the neighborhood. She said that if a six month review were conducted for this use, then the neighbors would have an opportunity to bring any concerns to the Board, and the Board could consider approval of other conditions for this use. An example could be the request that the parents not use the neighbors' driveways as a turn-around. A revocation, however, could only be granted if conditions approved by the Board were violated. Mr. Emmons said that if the neighbors alleged that the Board's conditions were not being met, then the Zoning Enforcement staff could bring this case back to the Board for consideration.

Mr. Emmons said that the staff had received seven letters of opposition to this request, and he circulated those letters to the Board members at this time.

Mr. Griggs said that in the four listed conditions, there was no restriction against cars turning around in neighbors' driveways. He said that such a condition would be very difficult to enforce, but the way to accomplish that is for the appellant to advise their clients not to do so.

Ms. DeShawn said that Ms. Benali had already agreed to this restriction. Mr. Griggs complimented the appellant and the neighborhood for working out their differences. Ms. Benail replied that she can advise her students' parents not to do this; but she would be in the house teaching, and could not police the parents' actual actions.

Mr. Ashroff Benali, husband of the appellant, said that they had applied for this permit in 2011 with the Small Business Association, and that they would agree to follow the Board's limitations on their use. He said he also was pleased that their neighbors had come to better understand their proposal.

Ms. DeShawn asked the Board to review the letters from the neighbors; and that while she had withdrawn her objections, she thought the Board should be aware of the other concerns expressed by her neighbors.

Vice-Chair Moore asked if there had been a large number of students visiting this home in the past. Mr. Benail replied that in the past, no more than one car brought students to their home at any one time. Since they began their application process last month, they have instructed their clients to not use the neighbors' driveways as a turn-around. He said that they currently only had nine students.

Ms. Benali presented a diagram to the Board, which showed that the majority of the cars would be coming to their home on Saturdays, since the children were out of school that day. Only one family brings two children at one time. With a total of only nine children visiting their home for tutoring, she did not see the congestion that the neighbors' letters described to the Board.

Vice-Chair Moore asked if, at any one time, there should be no more than two cars on the street, with one dropping off and one picking up. Mr. & Ms. Benail agreed.

Mr. Glover asked about the wording and meaning of condition #3. Mr. Emmons replied that the instruction was to be one-on-one tutoring. He said that in their application, they did ask that siblings be able to be tutored at the same time. The staff agreed that this would have the same impact as if the students were brought to the Benali home individually. He said that the staff did want to prevent classroom-type instruction at this location.

Ms. DeShawn asked if a precedent would be set with the approval of this request. Mr. Emmons responded that it would have no more impact than any other home occupation. Ms. DeShawn asked if other neighbors would have to follow the same procedure in the future, or would their requests be automatically approved if the Benali's request was approved. Mr. Emmons replied that every application must be reviewed individually, and on their own merits. In this way, each use can be better tailored to its property.

Mr. Griggs said that most of the letters were voicing concerns about traffic and safety. One, however, described the lack of upkeep on the house and property. He said he was inclined to approve this use, but only on the condition that it have a six-month review by the Board. If traffic were still a concern at that time, then he would consider that the use would not be to the neighbors' benefit. Ms. DeShawn replied that, with such a condition, she would withdraw all her objections to their request. She thought that they could work out their differences as neighbors often do. Mr. Griggs said that as long as the traffic problems are addressed, then there should be no issues at the time of the six-month review.

Mr. Benali displayed some photos of their home, and said that they purchased it at a foreclosure. He felt that the neighbors' issues, as stated in their letters, may have been describing the home before they purchased it. He said that they had loved and maintained their home since it had been purchased.

Mr. Emmons suggested that the six-month review follow notification to the appellant and the neighborhood association, rather than all owners in the 500' notice area. Vice-Chair Moore asked Ms. DeShawn if she would notify the neighborhood residents at that time. Ms. DeShawn replied in the affirmative.

Mr. Emmons read the language of a 5th condition for this use, and displayed it on the overhead projector, as follows:

5. The Board shall review this application in six months, with notice to the neighborhood association.

Mr. Emmons said that notice would also be provided to the appellant, as that is always done on such cases.

Vice-Chair Moore asked Mr. & Ms. Benali if they understood, and would agree to abide by these five conditions. They replied affirmatively.

Action – A motion was made by Ms. White, seconded by Mr. Glover and carried unanimously (Meyer, Stout and Stumbo absent) to approve **C-2012-47: NADIA ALI BENALI** – an appeal for a conditional use permit for a home occupation (tutoring) in a High Density Apartment (R-4) zone, on property located at 368 Shoreside Drive, based on the recommendation of the staff and subject to the five recommended conditions.

2. **C-2012-48: DAVID ROMERO** - appeals for a conditional use permit to offer live entertainment accessory to a restaurant in a Neighborhood Business (B-1) zone, on property located at 4379 Old Harrodsburg Road (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. A restaurant with live entertainment and dancing at this location should not adversely affect the subject or surrounding properties, or alter the character of the area. The shopping center as a whole is well buffered from the surrounding properties, and the central location of this use within the shopping center will further reduce the potential for any disturbances. No amplified music will be provided outdoors in the patio area.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The restaurant with live entertainment and dancing shall be established in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit and an Occupancy Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to opening the restaurant.

3. Any music provided on the patio shall not be amplified.
4. A note reflecting action of the Board shall be placed on any amended Final Development Plan for the subject property.
5. Documentation that there is enough available parking during the hours of operation of this use to meet the minimum required parking, shall be provided prior to the issuance of a Zoning Compliance Permit by the Division of Planning.

Representation – Mr. David Romero was present for his appeal.

Staff Report – Mr. Emmons presented the Staff Report on this request for a Conditional Use Permit for a live entertainment in conjunction with a restaurant at 4379 Old Harrodsburg Road. Mr. Emmons displayed the appellant's site plan on the overhead projector, and said that this site is near Bowman Mill Road. He said that many are familiar with the Ramsey's Restaurant use on the corner of these two roadways.

Mr. Emmons said that the subject property is located in a Neighborhood Business (B-1) zone, and the shopping center is completely built out. The building in the center of the property is well designed for a live entertainment use. The other buildings in the shopping center would provide a buffer from this proposed use to the residents of the Palomar Hills subdivision. Two of the three leasable units in the center building were proposed for this live entertainment conditional use.

Mr. Emmons reported that twice before, this property had been before the Board of Adjustment. Most recently, for a Wine & Spirits store, the Board approved live entertainment for their outdoor patio. A condition was imposed upon that use that the music not be amplified.

Mr. Emmons said that the appellants are seeking a conditional use permit so that they could have amplified music within the restaurant, and there will be a stage area for up to eight musicians. The use for the patio area is also requested for live entertainment; but as before, that area is to have unamplified music.

Mr. Glover asked where the patio was located on the property. Mr. Emmons displayed an aerial photograph of the site, noting that the patio was located on the Harrodsburg Road side of the existing building. He said that the applicants are occupying 2/3 of the building in the center of the shopping center for their restaurant and live entertainment use.

Mr. Griggs asked how long the previous conditional use operated at this location, and if there were any complaints associated with that live entertainment use on the patio. Mr. Emmons replied that there were no complaints associated with that use, but he was unsure how long it operated there. He said that the Board imposed a one-year review of that use, and the Board's minutes indicated that there were no complaints in that first year of operation.

Mr. Emmons said that the staff felt that this proposed use would be adequately buffered from the nearby residential properties, and that it would be appropriate at this location. He said that the necessary public facilities were available and adequate for this conditional use.

Mr. Emmons concluded by saying that the staff recommended approval of this request, subject to five conditions. He elaborated briefly on the 5th condition, saying that the site was under the control of a development plan that had been approved by the Planning Commission. He said that the development plan had a surplus of 30 parking spaces over the minimum number required by the Zoning Ordinance, but that not all of the restaurants were noted on that plan. This use is not anticipated to have operating hours that overlap with some of the other uses, including one of the restaurants that serves breakfast and lunch. He said that there is a need for documentation that the minimum amount of required parking can be met on the subject property.

Questions – Mr. Griggs asked if the Actor's Guild was still renting space at this location. Mr. Emmons replied that he was unsure. An unidentified member of the audience replied that it was occupying space in the shopping center.

Mr. Glover asked how the applicant would document their compliance with the parking requirements. Mr. Emmons said this could be accomplished by analyzing the hours of operation for the various businesses in the shopping center, and accounting for the spaces that are "on the ground." Mr. Emmons displayed again the aerial photograph of the center, and said that the staff was confident that there was enough parking in the center for the existing uses, but that the documentation was still necessary for the new use. He said that the spaces would be available at the various hours of the day, and the photo displayed on the

overhead projector showed that a number of spaces were available in that shopping center at the time the photo was taken.

Mr. Glover asked if the applicant would have to survey the owners of the shopping center to determine the other hours of operation. Mr. Emmons said that the staff would assist the appellant in this task, and that the staff was used to doing this for various developments. Mr. Glover asked if the appellant would need to survey the other business owners. Mr. Emmons replied that tools such as Google permitted a review of web-sites for businesses to obtain this information, and that this exercise would be necessary for the proposed restaurant use, regardless of the appellant's request for this conditional use permit.

Appellant's Presentation – Mr. Romero said that he had already held a meeting with all the restaurant owners in this shopping center, mainly to plan for employee parking locations and the like. Their goal was that the best parking in the center would remain available for the patrons of the restaurants.

Objectors – Kay Swain, resident of Palomar Hills subdivision on Gum Tree Lane, was present in opposition to this appeal. Ms. Swain said she was concerned with the close proximity of the homes in the subdivision to the live entertainment and dancing. She said there was potential for disruption from this use. She said that the noise inside and outside the establishment was a concern. In the evenings, there are many more cars in the parking lot than were shown in the photograph. There were some people that entered their subdivision to park along their streets to patronize these restaurants and businesses.

Ms. Swain said that she was also worried about the lack of an adequate buffer in this area. Using the aerial photograph, she pointed out that there was only a small fence separating the shopping center from the homes in Palomar Hills. She said that noise and parking would be hard to control by the business owner.

Ms. Swain said that the wine store was only in business a couple of years, and she said that the music on their patio could not be heard, and that the wine store was only open until about 10:00, and not as late as 1:00 AM. She said that was a much different time frame than was being considered in this instance.

Dr. Octavio Ramida, a resident of Gum Tree Lane in Palomar Hills, was also present to object. He said that when the residents first met with the developer of this shopping center, they reached an agreement that there would not be any type of loud entertainment. The agreement was made before the actual development took place. The existing wall was also a requirement of the developer in their agreement. He said that his property was behind that wall.

Dr. Ramida said that, despite the assertion earlier that there was enough parking in this center, there is not enough parking. He walks his dog every morning and evening in this area. The parking lot is usually full on Saturdays, with many patrons at Ramsey's Restaurant in the morning, and many at the Actor's Guild Theatre in the evening. He said that others park on their subdivision streets to patronize those businesses also.

Dr. Ramida said that their main objection is with the live music being proposed. He said that the original developer had filed for bankruptcy, and that the lender must now fill the gaps in the shopping center. He said that the neighbors understood this; but the entertainment and the music would attract patrons until the wee hours of the morning, and the neighbors would still hear the cars and motorcycles, in addition to the music. Their quiet neighborhood would be lost.

Beth O'Donnell, 4340 Gum Tree Lane, was present to object. She said that her house was just beyond the end of the wall, to the north of the shopping center. Ms. O'Donnell said that the potential for noise was a concern. The amplified music within the building and the unamplified music on the patio were potentially disruptive, especially the bass notes. Neighbors could already hear the traffic on Harrodsburg Road, so the wall will not be enough of a screen.

Ms. O'Donnell said that some already park on the end of her street to attend businesses in the center, and this could also increase with this use. The combination of the early morning hours of operation, the possibility of bands performing, and dancing is a big leap from the little wine and cheese establishment that was the prior use at this location. Thus, the previous use was not a good indicator of the proposed use.

Ms. O'Donnell said that there was also a potential for people to congregate in the parking lot after hours. She said that the entire paradigm shift from the small stores to the entertainment uses was of concern regarding the quality of life in their subdivision. She said that the neighborhood was originally assured by the developer that the type of businesses now proposed would not be permitted in this center.

Ms. O'Donnell said that their property values could also be at risk if these uses locate in the shopping center. Over time, the outdoor patio area could also be requested for amplified live entertainment. She said that, at the very least, the Board should delay consideration of this request so that more neighbors could be informed about it, as well as the church congregation immediately adjacent to this property.

Questions – Mr. Griggs asked if the firegate at the end Ms. O'Donnell's street remained closed. Ms. O'Donnell replied affirmatively. Mr. Griggs asked about the cars that park on the neighborhood side of the gate. Ms. O'Donnell replied that people do so, and then walk along the sidewalk, as it is not gated. She said that on a few occasions in the past, the gate was somehow opened during the night.

Mr. Griggs said that he was disappointed to learn that her neighbors do park at the end of her street to attend events in the shopping center. He said that, at times when he attended performances at the Actor's Guild, that parking was extremely tight in that shopping center. Ms. O'Donnell said she was worried about the extension of this problem, if this use is proposed. Mr. Griggs responded that the staff had recommended a review of the parking needs for this new restaurant by the Board, were this request to be approved. Ms. O'Donnell asked if this restaurant could open their establishment before the parking assessment was concluded. Mr. Griggs thought it would need to be done before they opened the restaurant. Mr. Emmons added that the restaurant would be permitted in this location. However, the permit for the live entertainment use could not be issued unless it was approved by the Board, and there was enough off-street parking available in the shopping center. Ms. O'Donnell said that this was part of the neighborhood's concern, as the name of the applicant's company is "SEC" and that the "C" stands for "concerts."

Jenny Stringer, resident of 4420 Old Schoolhouse Lane, was present to object. She said that her home was a historic property across Harrodsburg Road from the subject site. She identified her home on the overhead projector for the Board members. Ms. Stringer said that she and her neighbor had been in their homes since 1983, but they had seen a lot of change. Parking was not her main concern, but she asked the Board to listen to the legitimate concerns from the entire neighborhood.

Ms. Stringer said that Ramsey's had quite a business; but by 9:00 or 10:00 PM, their activity is diminishing. She said that the neighbors needed some additional time to better understand the proposed activities. She was very concerned with the buffering, as she and her husband have great difficulty in telling their guests goodbye, when standing on their front porch, because of the heavy noise from Harrodsburg Road, and from the activities in the shopping center. She said that they did not know that the wine shop was in the center, previously, as their activities were very low-key.

Appellant's Presentation – Mr. Romero said that he wanted to thank the neighbors for expressing their legitimate concerns. He understood that safety and property values are a concern to neighbors. He wanted to rebut the neighbors' concerns that there would be unsavory characters at this location in the evenings. He said that he had worked hard so that this would be the nicest restaurant within five miles of this location, and that it would not be a honky-tonk, or a hip-hop club. He said that the restaurant is about to open, but they were making this request in order to have live entertainment and dancing in the restaurant.

Vice-Chair Moore asked if Mr. Romero had obtained approval for their parking, based upon being a restaurant. He replied that he was unsure; but he thought so, based on information from Mr. Paul Ray Smith, his real estate broker. He wanted the Board to understand that he wanted these neighbors to come to his restaurant, as it would be tasteful and would have great food and several televisions in the establishment.

Mr. Romero said that this conditional use permit would not negate his responsibility to have the music provided at a reasonable sound level that doesn't disturb anyone. He can't open the doors and windows in this establishment. He didn't feel this would fit in with the neighborhood if he were to do so.

Mr. Romero said that the entrance would have a vestibule inside the entrance, to help buffer the sound. He hoped that his efforts would be understood and that his intentions were to add to this neighborhood – not to take something from it.

Questions – Mr. Griggs asked if there would only be live music on Saturday evenings. Mr. Romero said that was true; but that on his application, he stated that he would like as many as eight persons to be able to perform. He thought most entertainment would be provided by two and three-piece music groups. Still, he

didn't want to preclude the larger groups on an occasional basis. He said that eight persons would hardly fit on the stage they were constructing.

Mr. Griggs said that the application stated that music was requested on Friday, Saturday and Sunday, and asked if the entertainment was only desired on Saturday. Mr. Romero replied that he would be open to that restriction for groups that had percussion, but he would not want to be so restricted for acoustic performers.

Mr. Marx said that the Board should be aware that there are provisions in the Ordinance for the establishment to be soundproofed. He said that Article 8-14(d)(8) of the Ordinance made that requirement.

Mr. Glover said that the application listed the live entertainment for the weekend nights from 9:00-1:00, and he asked when the restaurant would stop serving food. Mr. Romero replied that they would continue serving until the restaurant closed. Mr. Glover asked if the music would be performed while patrons are eating. Mr. Romero replied affirmatively. Mr. Glover asked where the stage would be located within the space. Mr. Romero replied that it would be in a corner of the restaurant, and that his space would also provide indoor golf simulators. Mr. Glover asked if it would be similar to Damon's Restaurant. He said that it would be similar, but that would be a minimum standard for the environment he was trying to create.

The staff posted Article 8-14(d)(5) on the overhead projector, at Mr. Marx's earlier request, which identified that this use had to be soundproofed to the greatest extent feasible. Vice-Chair Moore asked if this was automatically required for this proposed use. Mr. Emmons replied in the affirmative. Mr. Marx stated that it was a great help to the enforcement staff for this to be added as a condition. Mr. Emmons said that it was not the staff's intention to imply that soundproofing was not going to be done at this location, and that the staff had no objection to this being added as a condition. Vice-Chair Moore asked if this restriction should be explicitly mentioned. Mr. Marx replied affirmatively, and said that the entire restriction, including that the use "not create a nuisance to the neighborhood," should also be added. He said that this should not be too burdensome to the appellant.

Mr. Glover asked if this should be required as a condition, since it is already a part of the Zoning Ordinance. Mr. Marx replied that the Board did not have to do so, but it was his recommendation that they do. This would provide clarity to all parties, for the record. Mr. Glover said that the Board could also provide a reference to this Ordinance section in their action. Vice-Chair Moore agreed that this section of the Ordinance could be referenced. Mr. Emmons said that the section being discussed was identified in the very first page of the Staff Report for this application.

Rebuttal – Ms. O'Donnell said that this restriction dealt with the indoor live entertainment, and she asked if there were any restrictions that could be proposed for the patio area. The indoor work alone would not resolve all of the neighbors' concerns with this conditional use. Ms. O'Donnell asked if the appellant could be restricted that no amplified live entertainment be provided on the patio area.

Mr. Glover said that he thought the appellant would have to return to the Board if he wanted to provide amplified music outdoors. Vice-Chair Moore said that he could not have amplified music without a return trip to the Board.

Ms. O'Donnell asked about the parking concerns, which were still an issue. She thought that the dancing and concerts would draw additional levels of automobiles to the site.

Mr. Griggs asked, if there were complaints about this use being a nuisance to the neighborhood at the time of a six-month review, if there would be grounds for a revocation by the Board. Mr. Emmons replied that there would be. He said that typically, the Board would hold the review, and then hold a separate hearing on a revocation. Mr. Marx agreed, and said that the revocation hearing would be required to have full notice.

Mr. Griggs said that, if this use were found to be a nuisance, that the neighbors would need to be diligent, and report all violations of their conditions of approval. Ms. O'Donnell asked, that if this were approved, who would have the burden to prove a nuisance in six months. She didn't think this switch in responsibility should be placed on the neighborhood; but rather, that this hearing should be continued. She said she didn't feel the neighbors should shoulder this responsibility, since a change of use was being proposed.

Vice-Chair Moore said that the neighbors were concerned about the wine shop, but the six-month review proved that it was not disruptive. She said she also remembered a case where there were several problems, and the Board denied a new use requested by the appellant. She said that all the Board was

asking the neighbors was to call in reports of problems they observe, if and when they arise. This neighborhood had such a concern in the past, but it turned out not to be the case. Dr. Ramida responded that there was no problem with the wine shop because the store was owned by the shopping center's owners, and because they did not have enough sales to sustain the business. He said that another reason the owners declared bankruptcy was that they were leasing spaces to their family members.

Ms. Stringer said that this request was not about the integrity of the appellant; but rather, that these tenant spaces were rented in a way that their occupancy could only be on a monthly or annual basis. She asked the Board to consider that such rental terms could be of a very short duration.

Mr. Emmons said that the staff proposed two additional conditions:

6. These uses shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance or disturbance to the surrounding neighborhood.
7. The Board shall review this use six (6) months after issuance of a Certificate of Occupancy.

Mr. Emmons said that additional review hearings could be scheduled, if they were found to be necessary.

Vice-Chair Moore asked if a condition limiting this use should be made for this business owner, and she asked if the staff was opposed to that restriction at this time. Mr. Emmons replied that the staff believed that these conditions are appropriate for this use at this site, whether it be operated by Mr. Romero or another applicant. However, if the Board wished to restrict this use to only this applicant, the staff would be agreeable.

Mr. Glover said that he did not feel that was necessary. Vice-Chair Moore said that the previous conditional use was restricted in that way, so why should this one not be also. Mr. Emmons said that if the Board would like to impose a null and void condition on this request, the staff would not be in opposition. Vice-Chair Moore said that she would feel more comfortable with such a restriction, given the neighborhood opposition to this request; and if it turned out that there were not any neighborhood complaints at that time, the need for this restriction could be revisited.

Mr. Emmons said that such a condition would mean that this appellant could not transfer the use to another appellant. Mr. Emmons read the additional condition as it was displayed on the overhead projector:

8. This conditional use shall become null and void should the appellant no longer operate at this location.

Action – A motion was made by Mr. Glover, seconded by Ms. White, to approve **C-2012-48: DAVID ROMERO** – an appeal for a conditional use permit to offer live entertainment accessory to a restaurant in a Neighborhood Business (B-1) zone, on property located at 4379 Old Harrodsburg Road for the reasons recommended by the staff, and subject to the eight conditions which had been provided, and which were displayed on the overhead projector.

The votes on the motion were as follows:

Ayes: Glover, Moore, White

Nays: Griggs

Absent: Meyer, Stout, Stumbo

The motion for approval carried, 3-1.

Vice-Chair Moore said that the Board had heard the objections from the neighborhood, but suggested that if this conditional use becomes objectionable before the six-month review, then the neighbors should notify the zoning enforcement staff. If the problems are severe, then the Board could even consider a revocation hearing prior to the scheduled six-month review.

E. **Administrative Reviews**

There were none remaining.

IV. **BOARD ITEMS** - The Vice-Chair announced that any items a Board member wished to present would be heard at this

time. None were offered by the Board members.

- V. **STAFF ITEMS** - The Vice-Chair announced that any items a Staff member wished to present would be heard at this time. None were offered by the staff.
- VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be September 28, 2012.
- VII. **ADJOURNMENT** - Since there was no further business, the Vice-Chair declared the meeting adjourned at 2:54 p.m.

Kathryn Moore, Vice-Chair

James Griggs, Secretary